Supreme Court, U.S.
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No. 98-1818

In The

Supreme Court of the United States

THE DIVISION OF MOTOR VEHICLES OF THE WISCONSIN DEPARTMENT OF TRANSPORTATION AND ITS ADMINISTRATOR,

Petitioners,

v.

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, AND THE UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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This supplemental brief is filed in response to the supplemental briefs filed by the Solicitor General and the State of South Carolina in *Reno v. Condon*, No. 98-1464. Those briefs describe in some detail how Public Law No. 106-69, 113 Stat. 986 (DOT Act), signed into law on October 9, 1999, adds a Spending Clause issue to the Tenth Amendment challenge to the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§ 2721-2725, that is now pending before this Court in *Reno v. Condon* and is presented in this case.

In *Reno v. Condon* the Solicitor General argued that the DOT Act does not render the challenge to the DPPA moot, but suggested that this Court should vacate the judgment of the Fourth Circuit and remand the case for further proceedings in light of the DOT Act. The State of South Carolina agreed. The Solicitor General's supplemental brief further stated (in footnote 8) that if this Court vacates and remands the *Reno v. Condon* case it should do the same for this case. We strongly disagree.

Unlike the situation in *Reno v. Condon*, remand in this case would serve no purpose since petitioners lost their challenge to the DPPA before the Seventh Circuit on Commerce Clause grounds. There would be no reason for the Seventh Circuit to address the spending power issue. If this Court vacated and remanded this case the State of Wisconsin would be denied any further review of the Seventh Circuit's decision. The Solicitor General's position in *Reno v. Condon* fails to take into account the position of Wisconsin and similarly situated States where the DPPA has survived a challenge.[1] *See, e.g., Oklahoma Dep't of Pub. Safety v. United States, petition for cert. pending*, No. 98-1760.

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[1] On March 31, 1999, Justice Stevens entered an order staying the mandate of the Seventh Circuit pending disposition by this Court of the petition for a writ of certiorari.

Petitioners believe it is entirely appropriate for this Court to grant certiorari in *this* case for the very reasons the Solicitor General sought certiorari in *Reno v. Condon* last term. In light of the extensive briefing that has already taken place in *Reno v. Condon*, the State of Wisconsin stands prepared to comply with an expedited briefing schedule so that argument on its Tenth Amendment challenge to the DPPA can still be heard this term.

CONCLUSION

For the above reasons, certiorari should be granted in this case if this Court vacates and remands the Fourth Circuit's decision in *Reno v. Condon*.

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